

The House Committee on Judiciary Non-civil offers the following substitute to SB 42:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the "Georgia Indigent Defense Act of 2003," so as to extensively revise said Act; to reconstitute the Georgia Public Defender Standards Council with new membership; to change the powers and duties of the council and provide that it shall be an advisory body to the Georgia Public Defender Agency and the Office of Alternative Defense Counsel; to provide for the Georgia Public Defender Agency as an agency of the state; to provide for its director and the powers and duties and operations of the agency and the director; to provide that the director shall have the control and management of the agency and shall exercise supervision with respect to circuit public defenders and carry out other duties formerly vested in the council; to provide for procedures for the removal of a circuit public defender from office; to change provisions relating to the utilization of third-year law students; to provide for the Office of Alternative Defense Counsel to manage cases in which a circuit or assistant public defender or capital defender division has a conflict of interest; to provide for duties and responsibilities of the office, annual accounting, and budgeting; to provide for an executive director and powers and duties of the executive director; to provide for other related matters; to amend Title 15 and Code Section 36-32-1 of the Official Code of Georgia Annotated, relating to courts and municipal courts, respectively, so as to conform cross-references; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the 'Georgia Indigent Defense Act of 2003,' is amended by revising Code Sections 17-12-1 through 17-12-10.1, which Code sections relate to the Georgia Public Defender Standards Council and its director and operations, as follows:

S. B. 42 (SUB)

17-12-1.

(a) This chapter shall be known and may be cited as the 'Georgia Indigent Defense Act of 2003.'

(b) The Georgia Public Defender Standards Council shall be an ~~independent agency~~ advisory body within the executive branch of state government.

(c) The Georgia Public Defender Agency shall be an independent agency within the executive branch of state government.

(d) The council, agency, and office shall be responsible for assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation under this chapter.

17-12-2.

As used in this chapter, the term:

(1) 'Agency' means the Georgia Public Defender Agency under the direction of the director.

~~(1)~~(2) 'Assistant public defender' means an attorney who is employed by any circuit public defender.

~~(2)~~(3) 'Circuit public defender' means the head of a public defender office providing indigent defense representation within any given judicial circuit of this state.

~~(3)~~(4) 'Circuit public defender office' means the office of any of the several circuit public defenders.

~~(4)~~(5) 'Council' means the Georgia Public Defender Standards Council.

~~(5)~~(6) 'Director' means the director of the Georgia Public Defender Agency ~~Standards Council.~~

(7) 'Executive director' means the director of the Office of Alternative Defense Counsel.

~~(6)~~(8) 'Indigent person' or 'indigent defendant' means:

(A) A person charged with a misdemeanor, violation of probation, or a municipal or county offense punishable by imprisonment who earns less than 100 percent of the federal poverty guidelines unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person or his or her dependents;

(B) A juvenile charged with a delinquent act or a violation of probation punishable by detention whose parents earn less than 125 percent of the federal poverty guidelines unless there is evidence that the juvenile or his or her parents have other resources that might reasonably be used to employ a lawyer without undue hardship on the juvenile, his or her parents, or the parent's dependents; and

(C) A person charged with a felony who earns or, in the case of a juvenile, whose parents earn, less than 150 percent of the federal poverty guidelines unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person, his or her dependents, or, in the case of a juvenile, his or her parents or the parent's dependents.

In no case shall a person whose maximum income level exceeds 150 percent of the federal poverty level or, in the case of a juvenile, whose household income exceeds 150 percent of the federal poverty level be an indigent person or indigent defendant.

~~(7)~~(9) 'Legislative oversight committee' means the Legislative Oversight Committee for the Georgia Public Defender ~~Standards Council~~ Agency and the Office of Alternative Defense Counsel.

(10) 'Office' means the Office of Alternative Defense Counsel.

~~(8)~~(11) 'Public defender' means an attorney who is employed in a circuit public defender office or who represents an indigent person pursuant to this chapter.

17-12-3.

(a) There is created the Georgia Public Defender Standards Council to be composed of 15 members.

(b) Effective July 1, 2009, the council shall be reconstituted as a new advisory body. The members serving on the council immediately prior to July 1, 2009, shall cease to serve on that date, but such prior members shall be eligible for reappointment to succeed themselves or to fill another position on the council. Ten members of the council shall be appointed as follows:

(1) Two members shall be appointed by the Governor, four members shall be appointed by the Lieutenant Governor, and four members shall be appointed by the Speaker of the House of Representatives, ~~the Chief Justice of the Supreme Court of Georgia, and the Chief Judge of the Georgia Court of Appeals~~ as further set forth in paragraph (2) of this subsection. Except as provided in paragraph (3.1) of this subsection, the members of the council shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the provision of adequate and effective representation of indigent defendants. The members shall serve terms of four years; ~~provided, however, that the members appointed from the even-numbered judicial administration circuits shall serve initial terms of six years and thereafter shall serve terms of four years;~~

(2) The members appointed pursuant to paragraph (1) of this subsection shall be chosen so that each of the ten judicial administration districts in this state is represented and so

that each appointing authority shall rotate the particular judicial administration district for which he or she is responsible for appointing. The appointments shall be as follows:

(A) For the initial appointments in 2009:

(i) The Governor shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 3 ~~and~~ one person who resides in judicial administration district 4, one person who resides in judicial administration district 7, and one person who resides in judicial administration district 8; and

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 5, ~~and~~ one person who resides in judicial administration district 6, one person who resides in judicial administration district 9, and one person who resides in judicial administration district 10;

~~(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8, except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments; and~~

~~(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10, except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments;~~

(B) For the first subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 5, ~~and~~ one person who resides in judicial administration district 6, one person who resides in judicial administration district 9, and one person who resides in judicial administration district 10; and

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 1, one person who resides in judicial administration district 2, one person who resides in judicial administration district 7, and one person who resides in judicial administration district 8;

~~(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10, except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments; and~~

~~(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2, except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments;~~

(C) For the second subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 1, one person who resides in judicial administration district 2, one person who resides in judicial administration district 7₂ and one person who resides in judicial administration district 8; and

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 3, one person who resides in judicial administration district 4, one person who resides in judicial administration district 9₂ and one person who resides in judicial administration district 10;

~~(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2, except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments; and~~

~~(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4, except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments;~~

(D) For the third subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 3, one person who resides in judicial administration district 4, one person who resides in judicial administration district 9₂ and one person who resides in judicial administration district 10;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 1₂ ~~and~~ one person who resides in judicial administration district 2, one person who resides in judicial administration district 5, and one person who resides in judicial administration district 6; and

~~(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial~~

~~administration district 4, except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments, and~~

~~(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6, except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments, and~~

(E) For the fourth subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 1 ~~and~~ one person who resides in judicial administration district 2, one person who resides in judicial administration district 5, and one person who resides in judicial administration district 6;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 3 ~~and~~ one person who resides in judicial administration district 4, one person who resides in judicial administration district 7, and one person who resides in judicial administration district 8.

~~(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6, except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments, and~~

~~(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8, except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments.~~

All subsequent appointments shall continue on, with the entire cycle starting over again as specified in subparagraph (A) of this paragraph;

(3) The eleventh member shall be one circuit public defender who shall serve on the council. After the initial appointments as set forth in paragraph (4) of this subsection, the circuit public defender to serve on the council shall be elected by a majority vote of all the circuit public defenders. The circuit public defender councilmember shall serve terms of two years;

(3.1) Four members of the council shall be county commissioners who have been elected and are serving as members of a county governing authority in this state. The county commissioner councilmembers shall be appointed by the Governor on or before July 1, ~~2008~~ 2009, and shall be from different geographic regions of this state. The Governor may solicit recommendations for such appointees from the Association County

Commissioners of Georgia. Each county commissioner councilmember shall serve terms of four years; provided, however, that the initial appointments shall be for one, two, three, and four years, respectively, as designated by the Governor for each appointment, and thereafter, such members shall serve terms of four years. A county commission councilmember shall be eligible to serve so long as he or she retains the office by virtue of which he or she is serving on the council;

(4) Except as provided in paragraph (3.1) of this subsection, all initial appointments shall be made to become members of the council on July 1, ~~2003~~ 2009, and their successors shall become members of the council on July 1 following their appointment. ~~The initial appointees from the even-numbered judicial administration circuits shall serve until June 30, 2009. Notwithstanding the provisions of paragraph (3) of this subsection, the initial member representing the circuit public defenders shall be made by the Supreme Court of Georgia.~~ The person representing the circuit defender position on the initial council shall be engaged on a full-time basis in the provision of criminal defense to the indigent;

(5) Any vacancy for a member appointed pursuant to paragraphs (1), (2), and (3.1) of this subsection shall be filled by the appointing authority, and such appointee shall serve the balance of the vacating member's unexpired term; and

(6) Any vacancy for a member appointed pursuant to paragraph (3) of this subsection shall be the successor to the circuit public defender as set forth in subsection (e) of Code Section 17-12-20.

(c) In making the appointments for ten members of the council as provided in paragraph (2) of subsection (b) of this Code section, the appointing authorities shall seek to identify and appoint persons who represent a diversity of backgrounds and experience and shall solicit suggestions from the State Bar of Georgia, state and local bar associations, the Georgia Association of Criminal Defense Lawyers, the councils representing the various categories of state court judges in Georgia, and the Prosecuting Attorneys' Council of the State of Georgia, as well as from the public and other interested organizations and individuals within this state. The appointing authorities shall not appoint a prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office, or an employee of the Prosecuting Attorneys' Council of the State of Georgia to serve on the council.

~~(d) This Code section shall become effective on July 1, 2003, for purposes of making the initial appointments to the council.~~

17-12-4.

(a) The ~~council~~ agency:

(1) Shall be a legal entity;

(2) Shall have perpetual existence;

(3) May contract;

(4) May own property;

(5) May accept funds, grants, services, and gifts from any public or private source, which shall be used to defray the expenses incident to implementing its purposes;

(6) May adopt and use an official seal;

(7) May establish a principal office;

(8) May hire such administrative and clerical personnel as may be necessary and appropriate to fulfill its purposes; and

(9) Shall have such other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes.

~~(b) The council shall establish auditing procedures as may be required in connection with the handling of public funds.~~ The state auditor shall be authorized and directed to make an annual audit of the transactions of the ~~council~~ agency and to make a complete report of the same to the General Assembly. The annual audit shall disclose all moneys received by the ~~council~~ agency and all expenditures made by the ~~council~~ agency by revenue source, including all programs and special projects itemized in the General Appropriations Act. The annual audit shall include an itemization by revenue source of encumbered and reserved money. Revenue sources shall include each county governing authority's expenditures which are made pursuant to Code Sections 17-12-31 and 17-12-32 and city or county expenditures which are made pursuant to subsection (d) of Code Section 17-12-23. The state auditor shall also make an audit of the affairs of the ~~council~~ agency at any time when requested to do so by ~~a majority of the council~~ the director or by the Governor or General Assembly.

~~(c) The council may not provide compensation from its funds to any administrative or clerical personnel employed by the council if the personnel are then receiving retirement compensation from any retirement or pension fund created by Title 47 to provide compensation for past services as a judicial officer, prosecuting attorney, indigent defense attorney, court officer, or law enforcement officer except for county or municipal retirement funds.~~

17-12-5.

(a) To be eligible for appointment as the director, a candidate shall be a member in good standing of the State Bar of Georgia with at least seven years' experience in the practice of law. The director shall be selected on the basis of training and experience and such other qualifications as the ~~council~~ Governor deems appropriate. The director shall be appointed by the Governor and shall serve at the pleasure of the Governor.

(b)(1) The director shall work with and provide support services and programs for circuit public defender offices and other attorneys representing indigent persons in criminal or juvenile cases in order to improve the quality and effectiveness of legal representation of such persons and otherwise fulfill the purposes of this chapter. Such services and programs shall include, but shall not be limited to, technical, research, and administrative assistance; educational and training programs for attorneys, investigators, and other staff; assistance with the representation of indigent defendants with mental disabilities; assistance with the representation of juveniles; assistance with death penalty cases; and assistance with appellate advocacy.

(2) The director may establish divisions within the ~~office~~ agency to administer the services and programs as may be necessary to fulfill the purposes of this chapter. The director shall establish a mental health advocacy division and the Georgia capital defender division.

(3) The director may hire and supervise such staff employees and may contract with outside consultants on behalf of the ~~office~~ agency as may be necessary to provide the services contemplated by this chapter.

(c) The director shall have and may exercise the following power and authority:

(1) With the advice of the council, the ~~The~~ power and authority to take or cause to be taken any or all action necessary to perform any indigent defense services or otherwise necessary to perform any duties, responsibilities, or functions which the ~~council~~ agency is authorized by law to perform or to exercise any power or authority which the ~~council~~ agency is authorized by law to exercise; and

(2) With the advice of the council, the ~~The~~ power and authority to make, promulgate, enforce, or otherwise require compliance with any and all rules, regulations, procedures, or directives necessary to perform any indigent defense services, to carry into effect the minimum standards and procedures promulgated by the ~~council~~ agency, or otherwise necessary to perform any duties, responsibilities, or functions which the ~~council~~ agency is authorized by law to perform, ~~or to exercise any power or authority which the council is authorized by law to exercise; and~~

~~(3) The power and authority to assist the council in the performance of its duties, responsibilities, and functions and the exercise of its power and authority.~~

(d) The director shall:

(1) With the advice of the council, prepare ~~Prepare~~ and submit to the ~~council~~ agency a proposed the budget for the ~~council~~ agency. The director shall also prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the ~~council~~ agency and such other information as the ~~council~~ Governor may require;

- (2) With the advice of the council, develop ~~Develop~~ such rules, policies, procedures, regulations, and standards as may be necessary to carry out the provisions of this chapter and comply with all applicable laws, standards, and regulations; ~~and submit these to the council for approval;~~
- (3) Administer and coordinate the operations of the agency ~~council and supervise compliance with rules, policies, procedures, regulations, and standards adopted by the council;~~
- (4) Maintain proper records of all financial transactions related to the operation of the ~~council~~ agency;
- (5) At the director's discretion, solicit and accept on behalf of the ~~council~~ agency any funds, services, training, or educational opportunities that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests;
- (6) Coordinate the services of the ~~council~~ agency with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this chapter and consult with professional bodies concerning the implementation and improvement of programs for providing indigent services;
- (7) Provide for the training of attorneys and other staff involved in the legal representation of persons subject to this chapter;
- (8) Attend all council meetings; ~~except those meetings or portions thereof that address the question of appointment or removal of the director;~~
- (9) Ensure that the expenditures of the ~~council~~ agency are not greater than the amounts budgeted or available from other revenue sources;
- (10) Hire; ~~with the pending approval of the council;~~ a mental health advocate who shall serve as director of the division of the office of mental health advocacy;
- (11) Hire; ~~with the pending approval of the council;~~ the capital defender who shall serve as the director of the division of the office of the Georgia capital defender;
- (12) Evaluate each circuit public defender's job performance ~~and communicate his or her findings to the council; and~~
- (13) Establish auditing procedures as may be required in connection with the handling of public funds; Perform other duties as the council may assign.
- (14) Prepare annually a report of the agency's activities in order to provide the General Assembly, the Governor, and the Supreme Court of Georgia with an accurate description and accounting of the preceding year's expenditures and revenue, including moneys received from cities and county governing authorities. Such report shall include a three-year cost projection and anticipated revenues for all programs defined in the General Appropriations Act;

(15) Provide to the General Assembly, the Governor, and the Supreme Court of Georgia a detailed analysis of all grants and funds, whether public or private, applied for or granted, together with how and in what manner the same are to be utilized and expended; and

(16) Prepare and submit a budget estimate for the agency necessary for fulfilling the purposes of this chapter to the director of the Office of Planning and Budget in accordance with Code Section 45-12-78.

17-12-6.

(a) The council shall assist the ~~public defenders throughout the state~~ agency and the office in their efforts to provide adequate legal defense to the indigent defendants. Assistance ~~may~~ shall include:

(1) The preparation and distribution of a basic defense manual and other educational materials;

(2) The preparation and distribution of model forms and documents employed in indigent defense;

(3) The promotion of and assistance in the training of indigent defense attorneys;

(4) The provision of legal research assistance to public defenders; and

(5) The provision of such other assistance to public defenders as may be authorized by law.

(b) ~~The council~~ agency:

(1) Shall be the fiscal officer, through the director, for the circuit public defender offices and shall account for all moneys received from each governing authority; ~~and~~

(2) Shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in Georgia; and

(3) Shall not reimburse any attorney representing a defendant in a conflict of interest case on behalf of the agency if such attorney fails to submit a request for reimbursement more than 45 days after the month in which such acts occurred.

17-12-7.

(a) All members of the council shall at all times act in the best interest of indigent defendants who are receiving legal representation under the provisions of this chapter; provided, however, that unless pursuant to court order or subpoena, no member of the council shall intentionally assist any party involved in a civil action against the council, agency, or office in connection with providing indigent defense services. Members of the council shall not file any civil action against the state for any law related to providing indigent defense services.

(b) All members of the council shall be entitled to vote on any matter coming before the council unless otherwise provided by law or by rules adopted by the council concerning conflicts of interest.

~~(c) Each member of the council shall serve until a successor has been appointed. Removal of council members shall be for cause and shall be in accordance with policies and procedures adopted by the council at the pleasure of the appointing authority.~~

(d) Unless otherwise provided in this article, a quorum shall be a majority of the members of the council who are then in office, and decisions of the council shall be by majority vote of the members present, ~~except that a majority of the entire council must approve the appointment or removal of the chairperson or removal of a circuit public defender for cause pursuant to Code Section 17-12-20 and an alternative delivery system pursuant to Code Section 17-12-36 and other matters as set forth in Code Section 17-12-36.~~

(e) The council shall meet at least quarterly and at such other times and places as it deems necessary or convenient for the performance of its duties.

(f) The council shall elect a chairperson and such officers from the members of the council as it deems necessary and shall adopt such rules for the transaction of its business as it desires. The chairperson and officers shall serve for a term of two years and may be removed without cause by a vote of two-thirds of the members of the entire council and for cause by a majority vote of the entire council. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest or the removal of the chairperson for cause. The council shall keep and maintain minutes of all council meetings.

(g) The members of the council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the council. Any expenses incurred by the council shall be paid from the general operating budget of the ~~council~~ agency.

17-12-8.

(a) The council shall serve in an advisory capacity only, and council approval shall not be required for any action by the director, executive director, the agency, or the office unless such approval is specifically required under this chapter.

(b) Subject to fiscal considerations as dictated by the director or executive director, as appropriate, the ~~The~~ council shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles.

~~(b)(c)~~ (c) The council shall approve ~~and implement~~ programs, services, rules, policies, procedures, regulations, and standards as may be necessary to fulfill the purposes and provisions of this chapter and to comply with all applicable laws governing the rights of

indigent persons accused of violations of criminal law or Chapter 11 of Title 15, subject to fiscal considerations as dictated by the director or executive director.

~~(c)~~(d) All rules, regulations, policies, and standards that are ~~promulgated~~ recommended by the council and adopted, with or without changes, by the director or executive director, as appropriate, shall be publicly available for review and shall be posted on the ~~council's~~ agency's or office's website, as applicable. Each rule, regulation, policy, and standard shall identify the date upon which such rule, regulation, policy, and standard took effect.

17-12-9.

The ~~council~~ agency shall be authorized to conduct or approve for credit or reimbursement, or both, basic and continuing legal education courses or other appropriate training programs for the circuit public defenders or their staff members. The ~~council~~ agency, in accordance with such rules as ~~it~~ the director shall adopt, shall be authorized to provide reimbursement, in whole or in part, for the actual expenses incurred by ~~any~~ circuit public ~~defender~~ defenders or their staff members in attending any approved course or training program from funds as may be appropriated or otherwise made available to the ~~council~~ agency. The circuit public defenders or their staff members shall be authorized to receive reimbursement for actual expenses incurred in attending approved courses or training programs. The ~~council~~ director shall adopt rules governing the approval of courses and training programs for credit or reimbursement as may be necessary to administer this Code section properly.

17-12-10.

~~(a) The council shall prepare annually a report of its activities in order to provide the General Assembly, the Governor, and the Supreme Court of Georgia with an accurate description and accounting of the preceding year's expenditures and revenue, including moneys received from cities and county governing authorities. Such report shall include a three-year cost projection and anticipated revenues for all programs defined in the General Appropriations Act.~~

~~(b) The council shall provide to the General Assembly, the Governor, and the Supreme Court of Georgia a detailed analysis of all grants and funds, whether public or private, applied for or granted, together with how and in what manner the same are to be utilized and expended.~~

~~(c)~~ The council, director, and executive director shall each prepare annually a report in order to provide the General Assembly and the Governor with information on ~~the council's~~ assessment their assessments of the delivery of indigent defense services, including, but not limited to, the costs involved in operating each program and each governing authority's

454 indigent person verification system, methodology used, costs expended, and savings
455 realized.

456 17-12-10.1.

457 (a) There is created the Legislative Oversight Committee for the Georgia Public Defender
458 ~~Standards Council~~ Agency and Office of Alternative Defense Counsel which shall be
459 composed of eight persons: three members of the House of Representatives appointed by
460 the Speaker of the House of Representatives, three members of the Senate appointed by the
461 Senate Committee on Assignments or such person or entity as established by Senate rule,
462 and one member of the House of Representatives and one member of the Senate appointed
463 by the Governor. The members of such committee shall be selected within ten days after
464 the convening of the General Assembly in each odd-numbered year and shall serve until
465 their successors are appointed.

466 (b) The Speaker of the House of Representatives shall appoint a member of such
467 committee to serve as chairperson, and the Senate Committee on Assignments or such
468 person or entity as established by Senate rule shall appoint one member of the committee
469 to serve as vice chairperson during each even-numbered year. The Senate Committee on
470 Assignments or such person or entity as established by Senate rule shall appoint a member
471 of such committee to serve as chairperson, and the Speaker of the House of Representatives
472 shall appoint one member to serve as vice chairperson during each odd-numbered year.
473 Such committee shall meet at least three times each year and, upon the call of the
474 chairperson, at such additional times as deemed necessary by the chairperson.

475 (c) It shall be the duty of such committee to review and evaluate:

476 (1) Information on new programs submitted by the council, agency, or office;

477 (2) Information on rules, regulations, policies, and standards proposed by the council,
478 agency, or office;

479 (3) The strategic plans for the ~~council~~ agency and office;

480 (4) Program evaluation reports and budget recommendations of the ~~council~~ agency and
481 office;

482 (5) The fiscal impact of fees and fines on counties;

483 (6) The reports submitted pursuant to Code Section 15-21A-7 in order to identify, among
484 other things, opportunities to reduce or consolidate fees, fines, and surcharges; and

485 (7) Such other information or reports as deemed necessary by such committee.

486 (d) The council ~~and~~ director, and executive director shall cooperate with such committee
487 and provide such information or reports as requested by the committee for the performance
488 of its functions.

~~(e) The council shall submit its budget estimate to the director of the Office of Planning and Budget in accordance with subsection (a) of Code Section 45-12-78.~~

~~(f)~~(e) The legislative oversight committee shall make an annual report of its activities and findings to the membership of the General Assembly and the Governor within one week of the convening of each regular session of the General Assembly. The chairperson of such committee shall deliver written executive summaries of such report to the members of the General Assembly prior to the adoption of the General Appropriations Act each year.

~~(g)~~(f) The members of such committee shall receive the allowances authorized for legislative members of legislative committees. The funds necessary to pay such allowances shall come from funds appropriated to the House of Representatives and the Senate.

~~(h)~~(g) The legislative oversight committee shall be authorized to request that a performance audit of the ~~council~~ agency or office be conducted."

SECTION 2.

Said chapter is further amended by revising subsection (a) of Code Section 17-12-11, relating to mental health advocacy division, duties, responsibilities, and management, as follows:

"(a) The mental health advocacy division shall represent in any court in this state indigent persons found not guilty by reason of insanity at the time of the crime or found mentally incompetent to stand trial and shall be the successor to the office of mental health advocacy created by Article 4 of this chapter as it existed on June 30, 2008. Any assets or resources of the office of mental health advocacy shall be transferred to the ~~council~~ agency. The mental health advocacy division office shall serve all counties of this state."

SECTION 3.

Said chapter is further amended by revising subsection (a) of Code Section 17-12-12, relating to Georgia capital defender division and duties, responsibilities, and management, as follows:

"(a) The Georgia capital defender division shall represent all indigent persons charged with a capital felony for which the death penalty is being sought in any court in this state and shall be the successor to the Office of the Georgia Capital Defender created by Article 6 of this chapter as it existed on June 30, 2008. Any assets or resources of the Office of the Georgia Capital Defender shall be transferred to the ~~council~~ agency. The Georgia capital defender division shall serve all counties of this state."

SECTION 4.

Said chapter is further amended by repealing Code Sections 17-12-12.1 and 17-12-13, relating to the capital defender division and effective date, respectively, which read as follows:

"17-12-12.1.

(a) If there is a conflict of interest such that the Georgia capital defender division is unable to defend any indigent person accused of a capital felony for which the death penalty is being sought, the director shall determine and appoint counsel to represent the defendant. The director shall establish the contractual agreement with the defendant's counsel for payment of representing the defendant, and, when feasible and prudent, a flat fee structure shall be utilized.

(b) A maximum of two attorneys shall be paid by the council pursuant to a contractual agreement or at an hourly rate established by the council with state funds appropriated to the council. State funds shall be appropriated to the council for use by the Georgia capital defender division for the first \$150,000.00 paid for each death penalty case. Funding for attorney's fees and expenses between \$150,000.01 and \$250,000.00 for each death penalty case shall be paid through state appropriations for 75 percent of such attorney's fees and expenses, and the county governing authority where the indictment was returned shall pay 25 percent of such attorney's fees and expenses. Funding for all attorney's fees and expenses in excess of \$250,000.00 for each death penalty case shall be paid through state appropriations for 50 percent of such attorney's fees and expenses, and the county governing authority where the indictment was returned shall pay 50 percent of such attorney's fees and expenses.

(c) The council, with the assistance of the Georgia capital defender division, shall establish guidelines for all expense requests for cases in which the death penalty is sought, including, but not limited to, attorney's fees, expert witness fees, investigative fees, travel and accommodation expenses, and copy and transcription costs.

(d) A county governing authority may provide supplemental compensation to counsel appointed pursuant to this Code section.

17-12-13.

This article shall become effective on December 31, 2003, except as specified in Code Section 17-12-3."

SECTION 5.

Said chapter is further amended by revising Code Section 17-12-20, relating to selection and removal of circuit public defenders, as follows:

"17-12-20.

(a) On and after July 1, 2008, there is created in each judicial circuit in this state a circuit public defender supervisory panel to be composed of seven members. The Lieutenant Governor, the Speaker of the House of Representatives, and the chief judge of the superior

court of the circuit shall each appoint one member. The Governor shall appoint four members, two of which shall be members of the governing authority of the counties within the judicial circuit for which such member is appointed to serve. A member of a governing authority shall be eligible to serve so long as he or she retains the office by virtue of which he or she is serving on the panel. Other than the county commissioner, members of the circuit public defender supervisory panel shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the provision of adequate and effective representation of indigent defendants. A prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office, or an employee of the Prosecuting Attorneys' Council of the State of Georgia shall not serve as a member of the circuit public defender supervisory panel after July 1, 2005. On and after July 1, 2008, no employees of the ~~council~~ agency shall serve as a member of the circuit public defender supervisory panel. Members of the circuit public defender supervisory panel shall reside in the judicial circuit in which they serve. The circuit public defender supervisory panel members shall serve for a term of five years. Any vacancy for an appointed member shall be filled by the appointing authority.

(b)(1) By majority vote of its membership, the circuit public defender supervisory panel shall annually elect a chairperson and secretary and determine a quorum for the transaction of business. The chairperson shall conduct the meetings and deliberations of the panel and direct all activities. The secretary shall keep accurate records of all the meetings and deliberations and perform such other duties as the chairperson may direct. The panel may be called into session upon the direction of the chairperson or by the ~~council~~ director.

(2) By majority vote of its membership, the circuit public defender supervisory panel shall appoint the circuit public defender in the circuit as provided in this article. The first such appointments shall be made to take office on January 1, 2005, for terms of up to four years. The initial appointments shall be for a term of up to four years. A circuit public defender may be appointed for successive terms but shall not be reappointed if he or she was removed pursuant to subsection (c) of this Code section.

(c) A circuit public defender may be removed for cause ~~by a majority vote of the council and may be removed without cause by a vote of two-thirds of the members of the entire council~~ as provided in Code Section 17-12-20.1.

(d) A circuit public defender supervisory panel may convene at any time during its circuit public defender's term of office and shall convene at least semiannually for purposes of reviewing the circuit public defender's job performance and the performance of the circuit public defender office. The council and circuit public defender shall be notified at least two weeks in advance of the convening of the circuit public defender supervisory panel.

The circuit public defender shall be given the opportunity to appear before the circuit public defender supervisory panel and present evidence and testimony. The chairperson shall determine the agenda for the semiannual review process, but, at a minimum, such review shall include information collected pursuant to subsection (c) of Code Section 17-12-24, usage of state and local funding, expenditures, and budgeting matters. The chairperson shall make an annual report on or before ~~the thirtieth day of September~~ 30 of each year concerning the circuit public defender supervisory panel's findings regarding the job performance of the circuit public defender and his or her office to the ~~council~~ director on a form provided to the panel by the ~~council~~ director. If at any time the circuit public defender supervisory panel finds that the circuit public defender is performing in a less than satisfactory manner or finds information of specific misconduct, the circuit public defender supervisory panel may by majority vote of its members adopt a resolution seeking review of ~~their~~ its findings and remonstrative action by the ~~council~~ director. Such resolution shall specify the reason for such request. All evidence presented and the findings of the circuit public defender supervisory panel shall be forwarded to the ~~council~~ director within 15 days of the adoption of the resolution. ~~The council shall initiate action on the circuit public defender supervisory panel's resolution at its next regularly scheduled meeting and take final action within 60 days thereafter. The council shall notify the circuit public defender supervisory panel, in writing, of any actions taken pursuant to submission of a resolution under this subsection.~~

(e) If a vacancy occurs for the position of circuit public defender, the chief judge of the superior court of the circuit shall appoint an interim circuit public defender to serve until the circuit public defender supervisory panel has appointed a replacement. The circuit public defender supervisory panel shall appoint a replacement circuit public defender within three months of the occurring of the vacancy. The replacement circuit public defender shall not be any individual who has been removed by ~~the council~~ pursuant to subsection (c) of this Code section."

SECTION 6.

Said chapter is further amended by adding a new Code section to read as follows:

"17-12-20.1.

(a) Whenever the director determines that an investigation of a circuit public defender should be made as a result of a finding by the director that the circuit public defender is performing in a less than satisfactory manner or finds information of specific misconduct, the director shall notify the Governor and the circuit public defender. The circuit public defender may agree to a voluntary suspension or may resign. Within 30 days of such notice, the Governor shall appoint two circuit public defenders and a member of the council

631 who shall constitute a committee to conduct an investigation of the circuit public defender.
632 The members of any such committee shall receive no compensation for their services but
633 shall be reimbursed for any expenses directly incurred in connection with the investigation
634 from funds available to the agency in the discretion of the director. The committee shall
635 make a report and recommendation regarding the circuit public defender to the Governor
636 within 30 days from the date of the appointment of the committee.

637 (b) If the committee by majority vote recommends the suspension of the circuit public
638 defender, the Governor shall be authorized to suspend the circuit public defender for a
639 period of up to 90 days. The Governor may extend such period of suspension once for an
640 additional 30 days. If the committee by majority vote recommends the removal of the
641 circuit public defender, he or she may appeal to the council for a final determination."

642 SECTION 7.

643 Said chapter is further amended by revising Code Section 17-12-22, relating to provision of
644 counsel in event of a conflict of interests, as follows:

645 "17-12-22.

646 ~~(a) The council shall establish a procedure for providing legal representation in cases~~
647 ~~where the circuit public defender office has a conflict of interest. Such procedure may~~
648 ~~include, but shall not be limited to, the appointment of individual counsel on a case-by-case~~
649 ~~basis or the utilization of another circuit public defender office when feasible. It is the~~
650 ~~intent of the General Assembly that the council consider the most efficient and effective~~
651 ~~system to provide legal representation where the circuit public defender office has a~~
652 ~~conflict of interest.~~

653 ~~(b) The circuit public defender shall establish a method for identifying conflicts of interest~~
654 ~~at the earliest possible opportunity in accordance with rules and regulations established by~~
655 ~~the agency. If there is a conflict of interest such that the circuit public defender office~~
656 ~~cannot represent a defendant and an attorney who is not employed by the circuit public~~
657 ~~defender office is appointed, such attorney shall have a contractual relationship with the~~
658 ~~council to represent indigent persons in conflict of interest cases, and such relationship may~~
659 ~~include, but shall not be limited to, a flat fee structure, the Office of Alternative Defense~~
660 ~~Counsel shall provide legal representation as provided for in Article 5 of this chapter.~~

661 ~~(c) Attorneys who seek appointment in conflict cases shall have such experience or~~
662 ~~training in the defense of criminal cases as is necessary in light of the complexity of the~~
663 ~~case to which he or she is appointed and shall meet such qualifications, regulations, and~~
664 ~~standards for the representation of indigent defendants as are established by the council."~~

SECTION 8.

Said chapter is further amended by revising subsection (d) of Code Section 17-12-23, relating to representation by circuit public defenders, as follows:

"(d) A city or county may contract with the circuit public defender office or the Office of Alternative Defense Counsel for the provision of criminal defense for indigent persons accused of violating city or county ordinances or state laws. If a city or county does not contract with the circuit public defender office, the city or county shall be subject to all applicable rules, regulation, policies, and standards adopted by the ~~council~~ agency for representation of indigent persons in this state."

SECTION 9.

Said chapter is further amended by revising subsections (a) and (c) of Code Section 17-12-24, relating to operations of circuit public defenders, as follows:

"(a) The circuit public defender, or any other person or entity providing indigent defense services, ~~or~~ using the system established pursuant to Code Section 17-12-80 shall determine if a person or juvenile arrested, detained, or charged in any manner is an indigent person entitled to representation under this chapter."

"(c) The circuit public defender shall keep and maintain appropriate records, which shall include the number of persons represented, including cases assigned to alternative defense counsel or other counsel based on conflict of interest; the offenses charged; the outcome of each case; the expenditures made in carrying out the duties imposed by this chapter; and any other information requested by the ~~council~~ agency. Failure to maintain accurate records may be grounds for suspension or removal from office."

SECTION 10.

Said chapter is further amended by revising Code Section 17-12-26, relating to budget estimates, as follows:

"17-12-26.

~~The council shall prepare and submit to the director of the Office of Planning and Budget its budget estimate necessary for fulfilling the purposes of this chapter in accordance with Code Section 45-12-78. The council shall be authorized to seek, solicit, apply for, and utilize funds from any public or private source to use in fulfilling the purposes of this chapter. Reserved.~~

SECTION 11.

Said chapter is further amended by revising paragraph (2) of subsection (a) and subsection (b) and by repealing subsection (h) of Code Section 17-12-27, relating to public defender staff, as follows:

"(2) Subject to funds being appropriated by the General Assembly or otherwise available, additional assistant public defenders as may be authorized by the ~~council~~ director. In authorizing additional assistant public defenders, the ~~council~~ director shall consider the caseload, present staff, and resources available to each circuit public defender and shall make authorizations as will contribute to the efficiency of individual circuit public defenders and the effectiveness of providing adequate legal defense for indigent defendants.

(b) Each assistant public defender appointed pursuant to subsection (a) of this Code section shall be classified based on education, training, and experience. The jobs of assistant public defenders and the minimum qualifications required for appointment or promotion to each job shall be established by the ~~council~~ agency based on education, training, and experience and in accordance with the provisions of Code Sections 17-12-30 and 17-12-34."

"(h) Notwithstanding the provisions of subsection (g) of this Code section, an employee of a local public defender office who was an employee of the office on June 30, 2004, and who becomes a circuit public defender or an employee of a circuit public defender office before July 1, 2005, may elect, with the consent of the former employer and the consent of the council, to remain an employee of the entity for which the employee worked as a local public defender; and such entity shall be his or her employer for all purposes, including, without limitation, compensation and employee benefits. The right to make an election pursuant to this subsection shall expire on July 1, 2005. The council shall reimburse the appropriate entity for compensation, benefits, and employer contributions under the federal Social Security Act, but the total payment from the council to the entity on behalf of the employee shall not exceed the amount otherwise payable to or for the employee under the circumstance where the employee had become a state employee."

SECTION 12.

Said chapter is further amended by revising subsection (a) of Code Section 17-12-28, relating to circuit public defender investigators, as follows:

"(a) Subject to the provisions of this Code section, the circuit public defender in each judicial circuit is authorized to appoint one investigator to assist the circuit public defender in the performance of his or her official duties in the preparation of cases for trial. Subject to funds being appropriated by the General Assembly or otherwise available, the circuit

public defender in each judicial circuit may appoint additional investigators as may be authorized by the ~~council~~ director. In authorizing additional investigators, the ~~council~~ director shall consider the caseload, present staff, and resources available to each circuit public defender and shall make authorizations as will contribute to the efficiency of individual circuit public defenders and the effectiveness of circuit public defenders throughout the state in providing adequate legal defense for indigent defendants."

SECTION 13.

Said chapter is further amended by revising subsection (a) of Code Section 17-12-29, relating to circuit public defender personnel, as follows:

"(a) Each circuit public defender is authorized to employ administrative, clerical, and paraprofessional personnel as may be authorized by the ~~council~~ director based on funds appropriated by the General Assembly or otherwise available; provided, however, that each circuit public defender shall be authorized not less than two such personnel. In authorizing administrative, clerical, and paraprofessional personnel, the ~~council~~ director shall consider the caseload, present staff, and resources available to each circuit public defender and shall make authorizations as will contribute to the efficiency of individual circuit public defenders in providing effective criminal defense for indigent defendants."

SECTION 14.

Said chapter is further amended by revising paragraphs (1) through (5) of subsection (c) of Code Section 17-12-30, relating to classification and compensation of public defender staff, as follows:

"(c)(1) The ~~council~~ director shall establish salary ranges for each state paid position authorized by this article ~~or any other provision of law~~. Salary ranges shall be similar to the state-wide and senior executive ranges adopted by the State Merit System of Personnel Administration and shall provide for minimum, midpoint, and maximum salaries not to exceed the maximum allowable salary. In establishing the salary ranges, all amounts will be rounded off to the nearest whole dollar. The ~~council~~ director may, from time to time, revise the salary ranges to include across-the-board increases which the General Assembly may from time to time authorize in the General Appropriations Act.

(2) The circuit public defender shall fix the compensation of each state paid employee appointed pursuant to this article in accordance with the job to which the person is appointed and the appropriate salary range.

(3) All salary advancements shall be based on quality of work, training, and performance. The salary of state paid personnel appointed pursuant to this article may

be increased at the first of the calendar month following the annual anniversary of the person's appointment. No employee's salary shall be advanced beyond the maximum established in the applicable pay range.

(4) Any reduction in salary shall be made in accordance with the salary range for the position and the policies, rules, or regulations adopted by the ~~council~~ director.

(5) The compensation of state paid personnel appointed pursuant to this article shall be paid in equal installments by the ~~council~~ agency as provided by this subsection from funds appropriated for such purpose. The ~~council~~ director may authorize employees compensated pursuant to this Code section to participate in voluntary salary deductions as provided by Article 3 of Chapter 7 of Title 45."

SECTION 15.

Said chapter is further amended by revising Code Section 17-12-32, relating to local government contracts for personnel, as follows:

"17-12-32.

The governing authority of any county or municipality within the judicial circuit which provides additional personnel for the ~~office of~~ circuit public defender office may contract with the ~~council~~ agency to provide such additional personnel in the same manner as is provided for state paid personnel in this article. Any such personnel shall be considered state employees and shall be entitled to the same fringe benefits as other state paid personnel employed by the circuit public defender pursuant to this article. The governing authority of such county or municipality shall transfer to the ~~council~~ agency such funds as may be necessary to cover the compensation, benefits, travel, and other expenses for such personnel."

SECTION 16.

Said chapter is further amended by revising Code Section 17-12-36, relating to alternative service delivery systems, and Code Section 17-12-37, relating to effective date, as follows:

"17-12-36.

(a) ~~The council may permit a~~ A judicial circuit composed of a single county ~~to~~ may continue in effect an alternative delivery system ~~to the one set forth in this article if: if~~ approved to do so under the law in effect prior to July 1, 2009.

~~(1) The delivery system:~~

~~(A) Has a full-time director and staff and had been fully operational for at least two years on July 1, 2003; or~~

~~(B) Is administered by the county administrative office of the courts or the office of the court administrator of the superior court and had been fully operational for at least two years on July 1, 2003;~~

~~(2) The council, by majority vote of the entire council, determines that the delivery system meets or exceeds its rules, regulations, policies, and standards, including, without limitation, caseload standards, as the council adopts;~~

~~(3) The governing authority of the county comprising the judicial circuit enacts a resolution expressing its desire to continue its delivery system and transmits a copy of such resolution to the council not later than September 30, 2004; and~~

~~(4) The governing authority of the county comprising the judicial circuit enacts a resolution agreeing to fully fund its delivery system.~~

~~(b) A judicial circuit composed of a single county may request an alternative delivery system only one time; provided, however, that if such judicial circuit's request for an alternative delivery system was disapproved on or before December 31, 2004, such judicial circuit may make one further request on or before September 1, 2005. The council shall allow such judicial circuit to have a hearing on such judicial circuit's request.~~

~~(c) The council shall make a determination with regard to continuation of an alternative delivery system not later than December 1, 2005, and if the council determines that such judicial circuit's alternative delivery system does not meet the standards as established by the council, the council shall notify such judicial circuit of its deficiencies in writing and shall allow such judicial circuit an opportunity to cure such deficiencies. The council shall make a final determination with regard to continuation of an alternative delivery system on or before December 31, 2005. Initial and subsequent approvals of alternative delivery systems shall be by a majority vote of the entire council.~~

~~(d) Any circuit whose alternative delivery system is disapproved at any time shall be governed by the provisions of this article other than this Code section.~~

~~(e)~~(b) In the event an alternative delivery system is approved, the council in operation, the director shall annually review the operation of such system and determine whether such system is meeting the standards as established by the ~~council~~ director and is eligible to continue operating as an approved alternative delivery system. In the event the ~~council~~ director determines that such system is not meeting the standards as established by the ~~council~~ director, the ~~council~~ director shall provide written notice to such system of the deficiencies and shall provide such system an opportunity to cure such deficiencies.

~~(f)~~(c) In the event an alternative delivery system is approved in operation, it shall keep and maintain appropriate records; which shall include the number of persons represented; the offenses charged; the outcome of each case; the expenditures made in providing services; and any other information requested by the ~~council~~ director.

(g)(d) In the event the ~~council~~ director disapproves an alternative delivery system ~~either~~
~~in its initial application or~~ on annual review, such system may appeal such decision to the
 Supreme Court of Georgia under such rules and procedures as shall be prescribed by the
 Supreme Court.

(h)(e) An approved alternative delivery system shall be paid by the ~~council~~ agency, from
 funds available to the ~~council~~ agency, in an amount equal to the amount that would have
 been allocated to the judicial circuit for the minimum salary of the circuit public defender,
 the assistant circuit public defenders, the investigator, and the administrative staff,
 exclusive of benefits, if the judicial circuit was not operating an alternative delivery system.

~~17-12-37.~~

~~This article shall become effective on January 1, 2005; provided, however, that the council
 and the circuit public defender selection panels shall be authorized to take administrative
 actions as may be necessary or appropriate to prepare for and phase-in full implementation
 of this article on or after December 31, 2003."~~

SECTION 17.

Said chapter is further amended by revising Code Sections 17-12-41 through 17-12-45,
 which Code sections relate to assistance by third-year law students or staff instructors and
 the effective date of this article, as follows:

"17-12-41.

An authorized third-year law student or staff instructor, when under the supervision of a
 circuit public defender or attorney employed by the office, may assist in criminal
 proceedings within this state as if admitted and licensed to practice law in this state except
 that all pleadings and other entries of record ~~must~~ shall be signed by a circuit public
 defender or ~~by his or her duly appointed assistant~~ attorney employed by the office and that,
 in the conduct of a trial or other criminal proceeding, a circuit public defender or ~~his or her~~
~~duly appointed assistant must~~ attorney employed by the office shall be physically present.

17-12-42.

A third-year law student or staff instructor may be authorized to assist a circuit public
 defender or attorney employed by the office in such form and manner as the judge of the
 court may prescribe, taking care that the requirements of this article and the good moral
 character of the third-year law student or staff instructor are properly certified by the dean
 of the law school.

869 17-12-43.

870 As to each third-year law student or staff instructor authorized to assist a circuit public
871 defender or attorney employed by the office, there shall be kept on file ~~in the office of the~~
872 with the clerk of the court in the county where such authority is to be exercised the dean's
873 certificate, the student's and instructor's oaths, and the judge's order as contemplated under
874 Code Section 17-12-42. The authority to assist a circuit public defender or attorney
875 employed by the office as allowed under this Code section shall extend for no longer than
876 18 months. If during this period any change occurs in the status of the student or instructor
877 at the law school in which he or she was enrolled or employed, that is, if the student ceases
878 his or her enrollment, is suspended, or is expelled or if the instructor ceases his or her
879 employment or is released by the school, any such authority shall terminate and be
880 revoked.

881 17-12-44.

882 Any third-year law student or staff instructor authorized to assist a circuit public defender
883 or attorney employed by the office under this article ~~is~~ shall not ~~be~~ required to possess the
884 qualifications for appointment to the office of circuit public defender or appointment as an
885 assistant circuit public defender as provided in ~~Article 1~~ of this chapter.

886 ~~17-12-45.~~

887 ~~This article shall become effective on January 1, 2005."~~

888 **SECTION 18.**

889 Said chapter is further amended by revising paragraph (1) of Code Section 17-12-50, relating
890 to definitions for recovery of attorney's fees and costs, as follows:

891 "(1) 'Paid in part' means payment by a county or municipality for a part of the cost of the
892 provision of indigent defense services pursuant to a contract with a circuit public
893 defender office or the Office of Alternative Defense Counsel as set forth in subsection (d)
894 of Code Section 17-12-23. The term shall not include payment by a county or
895 municipality for office space and other supplies as set forth in Code Section 17-12-34."

896 **SECTION 19.**

897 Said chapter is further amended by revising subsection (c) of Code Section 17-12-51, relating
898 to repayment of attorney's fees as a condition of probation, as follows:

899 "(c) If a defendant who is represented by a public defender, who is paid for entirely by the
900 state, enters a plea of nolo contendere, first offender, or guilty or is otherwise convicted,
901 the court may impose as a condition of probation repayment of all or a portion of the cost

for providing legal representation and other costs of the defense if the payment does not impose a financial hardship upon such defendant or such defendant's dependent or dependents. Such defendant shall make such payment through the probation department to the Georgia Public Defender ~~Standards Council~~ Agency or the Office of Alternative Defense Counsel, as applicable, for payment to the general fund of the state treasury."

SECTION 20.

Said chapter is further amended by revising Code Section 17-12-80, relating to determination of indigency, as follows:

"17-12-80.

(a) In order to retain funding as provided in Code Sections 15-21-74 and 15-21A-6, a governing authority shall verify that the applicant qualifies as an indigent person. The governing authority shall establish the methodology for verification and fund such process.

The governing authority shall produce auditable information to the ~~council~~ agency to substantiate its verification process as requested by the ~~council or its~~ director.

(b) The ~~council~~ director shall establish rules and regulations to determine approval of an indigent person verification system and shall annually provide written notification to the Georgia Superior Court Clerks' Cooperative Authority as to whether or not a governing authority has an approved indigent person verification system.

(c) The governing authority shall advise the circuit public defender, if applicable, or the administrator of the indigent defense system for the jurisdiction of the name of each person who has applied for legal services and provide identifying information for those persons who are financially eligible for services within one business day of such person's application for services."

SECTION 21.

Said chapter is further amended by adding a new Article 5 to read as follows:

"ARTICLE 5

17-12-100.

(a) The Office of Alternative Defense Counsel is hereby created and shall be an independent agency within the executive branch of state government.

(b) The office shall be responsible for assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation under this chapter in circumstances where the agency has a conflict of interest in providing legal representation. For purposes

of this article, a conflict of interest may include, but need not be limited to, circumstances in which a circuit public defender or assistant public defender represents a codefendant or a person who is a witness in the case or other circumstances identified in the Georgia rules of professional conduct as creating a conflict of interest. Case overload, lack of resources, and other similar circumstances shall not constitute a conflict of interest.

(c) The Governor shall appoint a person to serve as executive director of the office at the pleasure of the Governor. To be eligible for appointment as executive director, a candidate shall be a member in good standing with the State Bar of Georgia with at least five years of experience in the practice of law. The executive director shall not engage in the private practice of law.

(d) The executive director shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in indigent defendant conflict of interest cases in Georgia.

17-12-101.

(a) On and after January 1, 2010, the office shall provide legal representation in cases involving conflicts of interest for circuit public defender offices as determined pursuant to policies, rules, or regulations of the agency.

(b) The office shall provide legal representation for indigent persons by either contracting with licensed attorneys and investigators pursuant to Code Section 17-12-102 or by utilizing the office's own staff attorneys and investigators.

17-12-102.

(a)(1) On and after January 1, 2010, the office may contract, where feasible, without prior approval of the court, for the provision of attorney services for conflict of interest cases described in Code Section 17-12-101. Such contract may be by the establishment of an alternative defense counsel division in those circuits where the volume of cases may warrant a separate alternative defense counsel division. To provide for adequate legal representation of indigent persons, the office may contract, where feasible, without prior approval of the court, for the provision of investigative services for conflict of interest cases described in Code Section 17-12-101.

(2) The office shall establish, where feasible, a list of approved contract attorneys to serve as counsel and a list of approved investigators to provide investigative services in such cases.

(3) As a condition of placement on the approved list, the contracting attorney or investigator shall agree to provide services based on the terms to be established in a contract at either a fixed fee or the hourly rate for reimbursement set by the executive

director. Terms of the contract shall be negotiated between the executive director and the contract attorney or investigator. Contracts made with an attorney shall specify that the services shall be provided subject to the Georgia rules of professional conduct.

(4) Attorneys who seek to be a contracting attorney shall have such experience or training in the defense of criminal cases as is necessary in light of the complexity of the case to which he or she is appointed and shall meet such qualifications, regulations, and standards for the representation of indigent defendants as are established by the council.

(b) Contracts made pursuant to this Code section shall provide for reasonable compensation and reimbursement for expenses necessarily incurred, to be fixed and paid from funds appropriated therefor. The office shall review the bills submitted for reimbursement by any contract attorney or investigator and may approve or deny the payment of such bills in whole or in part based on the terms set forth in the contract negotiated between the executive director and the contract attorney or investigator.

17-12-103.

(a) The office:

(1) Shall be a legal entity;

(2) Shall have perpetual existence;

(3) May contract;

(4) May own property;

(5) May accept funds, grants, and gifts from any public or private source, which shall be used to defray the expenses incident to implementing its purposes;

(6) May adopt and use an official seal;

(7) May establish a principal office;

(8) May hire such administrative and clerical personnel as may be necessary and appropriate to fulfill its purposes; and

(9) Shall have such other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes.

(b) The state auditor shall be authorized and directed to make an annual audit of the transactions of the office and to make a complete report of the same to the General Assembly. The annual audit shall disclose all moneys received by the office and all expenditures made by the office by revenue source, including all programs and special projects itemized in the General Appropriations Act. The annual audit shall include an itemization by revenue source of encumbered and reserved money. The state auditor shall also make an audit of the affairs of the office at any time when requested to do so by the executive director or by the Governor or General Assembly.

17-12-104.

(a) If there is a conflict of interest such that the Georgia capital defender division or the office is unable to defend any indigent person accused of a capital felony for which the death penalty is being sought, the executive director shall determine and appoint counsel to represent the defendant. The executive director shall establish the contractual agreement with the defendant's counsel for payment of representing the defendant, and, when feasible and prudent, a flat fee structure shall be utilized.

(b) A maximum of two attorneys shall be paid by the office pursuant to a contractual agreement or at an hourly rate established by the executive director with state funds appropriated to the office. State funds shall be appropriated to the office for use by the Georgia capital defender division for the first \$150,000.00 paid for each death penalty case. Funding for attorney's fees and expenses between \$150,000.01 and \$250,000.00 for each death penalty case shall be paid through state appropriations for 75 percent of such attorney's fees and expenses, and the county governing authority where the indictment was returned shall pay 25 percent of such attorney's fees and expenses. Funding for all attorney's fees and expenses in excess of \$250,000.00 for each death penalty case shall be paid through state appropriations for 50 percent of such attorney's fees and expenses, and the county governing authority where the indictment was returned shall pay 50 percent of such attorney's fees and expenses.

(c) The office, with the assistance of the Georgia capital defender division, shall establish guidelines for all expense requests for cases in which the death penalty is sought, including, but not limited to, attorney's fees, expert witness fees, investigative fees, travel and accommodation expenses, and copy and transcription costs.

(d) A county governing authority may provide supplemental compensation to counsel appointed pursuant to this Code section.

17-12-105.

(a) When representing an indigent person, the attorney under contract with the office shall:

(1) Counsel and defend such person at every stage of the proceedings;

(2) Prosecute any direct or interlocutory appeal before or after conviction that the executive director and the contract attorney consider to be in the interest of justice; and

(3) Submit reimbursement requests within 45 days after the month the costs were accrued. Failure to comply with this paragraph shall void the office's obligation to reimburse such attorney for services rendered.

(b) In no case shall the executive director or a contract attorney be required to prosecute any appeal or other remedy unless the executive director and contract attorney are satisfied that there is arguable merit to the proceeding.

17-12-106.

(a)(1) The executive director shall work with and provide support services and programs for the office and other attorneys representing indigent persons in criminal or juvenile cases in order to improve the quality and effectiveness of legal representation of such persons and otherwise fulfill the purposes of this article. Such services and programs shall include, but shall not be limited to, technical, research, and administrative assistance; educational and training programs for attorneys, investigators, and other staff; assistance with the representation of indigent defendants with mental disabilities; assistance with the representation of juveniles; assistance with death penalty cases; and assistance with appellate advocacy.

(2) The executive director may establish divisions within the office to administer the services and programs as may be necessary to fulfill the purposes of this article.

(3) The executive director may hire and supervise such staff employees and may contract with outside consultants on behalf of the office as may be necessary to provide the services contemplated by this article.

(b) The executive director shall have and may exercise the following powers and authorities:

(1) The power and authority to take or cause to be taken any or all action necessary to perform any indigent defense services or otherwise necessary to perform any duties, responsibilities, or functions which the office is authorized by law to perform or to exercise any power or authority which the office is authorized by law to exercise; and

(2) With the advice of the council, the power and authority to make, promulgate, enforce, or otherwise require compliance with any and all rules, regulations, procedures, or directives necessary to perform any indigent defense services and to carry into effect the minimum standards and procedures promulgated by the office or otherwise necessary to perform any duties, responsibilities, or functions which the office is authorized by law to perform.

(c) The executive director shall:

(1) With the advice of the council, prepare and submit the budget for the office. The executive director shall also prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the office and such other information as the Governor may require;

(2) With the advice of the council, develop such rules, policies, procedures, regulations, and standards as may be necessary to carry out the provisions of this article and comply with all applicable laws, standards, and regulations;

(3) Administer and coordinate the operations of the office;

- 1077 (4) Maintain proper records of all financial transactions related to the operation of the
1078 office;
- 1079 (5) At the executive director's discretion, solicit and accept on behalf of the office any
1080 funds, services, training, or educational opportunities that may become available from
1081 any source, including government, nonprofit, or private grants, gifts, or bequests;
- 1082 (6) Coordinate the services of the office with any federal, county, or private programs
1083 established to provide assistance to indigent persons in cases subject to this chapter and
1084 consult with professional bodies concerning the implementation and improvement of
1085 programs for providing indigent services;
- 1086 (7) Provide for the training of attorneys and other staff involved in the legal
1087 representation of persons subject to this chapter;
- 1088 (8) Attend all council meetings;
- 1089 (9) Ensure that the expenditures of the office are not greater than the amounts budgeted
1090 or available from other revenue sources;
- 1091 (10) Establish auditing procedures as may be required in connection with the handling
1092 of public funds;
- 1093 (11) Evaluate office staff's job performance;
- 1094 (12) Prepare annually a report of the office's activities in order to provide the General
1095 Assembly, the Governor, and the Supreme Court of Georgia with an accurate description
1096 and accounting of the preceding year's expenditures and revenue, including moneys
1097 received from cities and county governing authorities. Such report shall include a
1098 three-year cost projection and anticipated revenues for all programs defined in the
1099 General Appropriations Act;
- 1100 (13) Provide to the General Assembly, the Governor, and the Supreme Court of Georgia
1101 a detailed analysis of all grants and funds, whether public or private, applied for or
1102 granted, together with how and in what manner the same are to be utilized and expended;
1103 and
- 1104 (14) Prepare and submit the office's budget estimate necessary for fulfilling the purposes
1105 of this article to the director of the Office of Planning and Budget in accordance with
1106 Code Section 45-12-78.
- 1107 17-12-107.
- 1108 (a) The office:
- 1109 (1) Shall be the fiscal officer, through the executive director, for the office and shall
1110 account for all moneys received from each governing authority; and

(2) Shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in conflict of interest cases in Georgia.

(b) The office shall be authorized to conduct or approve for credit or reimbursement, or both, basic and continuing legal education courses or other appropriate training programs for its staff members. The office, in accordance with such rules as the executive director shall adopt, shall be authorized to provide reimbursement, in whole or in part, for the actual expenses incurred by staff members in attending any approved course or training program from funds as may be appropriated or otherwise made available to the office. The staff members shall be authorized to receive reimbursement for actual expenses incurred in attending approved courses or training programs. The executive director shall adopt rules governing the approval of courses and training programs for credit or reimbursement as may be necessary to administer this subsection properly."

SECTION 22.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising subsections (e) and (g) of Code Section 15-6-76.1, relating to election by clerks as to investing or depositing funds, as follows:

"(e) When funds have been paid into the registry of the court and the order of the court relating to such funds does not state that such funds shall be placed in an interest-bearing trust account for the benefit of one or more of the parties, the clerk shall deposit such funds in an interest-bearing trust account, and the financial institution in which such funds are deposited shall remit, after service charges or fees are deducted, the interest generated by said funds directly to the Georgia Superior Court Clerks' Cooperative Authority by the last day of the month following the month in which such funds were received for distribution to the Georgia Public Defender ~~Standards Council~~ Agency for allotment to the circuit public defender offices. With each remittance, the financial institution shall send a statement showing the name of the court, the rate of interest applied, the average monthly balance in the account against which the interest rate is applied, the service charges or fees of the bank or other depository, and the net remittance. This subsection shall include, but not be limited to, cash supersedeas bonds for criminal appeal, other supersedeas bonds, and bonds or funds paid into the court registry in actions involving interpleader, condemnation, and requests for injunctive relief."

"(g) Any interest earned on funds subject to this Code section or Code Section 15-7-49, 15-9-18, or 15-10-240 while in the custody of the Georgia Superior Court Clerks' Cooperative Authority shall be remitted to the Georgia Public Defender ~~Standards Council~~ Agency."

SECTION 23.

Said title is further amended by revising Code Section 15-7-49, relating to remittance of interest from interest-bearing trust accounts, as follows:

"15-7-49.

When funds are paid into the court registry, the clerk shall deposit such funds in interest-bearing trust accounts, and the interest from those funds shall be remitted to the Georgia Superior Court Clerks' Cooperative Authority in accordance with the provisions of subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia Public Defender ~~Standards Council~~ Agency."

SECTION 24.

Said title is further amended by revising Code Section 15-9-18, relating to remittance of interest from cash bonds, as follows:

"15-9-18.

Whenever the sheriff transfers cash bonds to the clerk of the court, pursuant to Code Section 15-16-27, the clerk shall deposit such funds into interest-bearing trust accounts, and the interest from those funds shall be remitted to the Georgia Superior Court Clerks' Cooperative Authority in accordance with the provisions of subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia Public Defender ~~Standards Council~~ Agency."

SECTION 25.

Said title is further amended by revising Code Section 15-10-240, relating to remittance of interest from funds, as follows:

"15-10-240.

When funds are paid into the court registry, the clerk shall deposit such funds in interest-bearing trust accounts, and the interest from those funds shall be remitted to the Georgia Superior Court Clerks' Cooperative Authority in accordance with the provisions of subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia Public Defender ~~Standards Council~~ Agency."

SECTION 26.

Said title is further amended by revising subsection (b) of Code Section 15-16-27, relating to deposit by sheriff of cash bonds and reserves of professional bondspersons in interest-bearing accounts, as follows:

"(b) The financial institution in which the funds are deposited shall remit, after service charges or fees are deducted, the interest generated by such funds directly to the Georgia

Superior Court Clerks' Cooperative Authority in accordance with the provisions of subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the Georgia Public Defender ~~Standards Council~~ Agency and the Office of Alternative Defense Counsel. With each remittance, the financial institution shall send a statement showing the name of the county, deposits and withdrawals from the account or accounts, interest paid, service charges or fees of the bank or other depository, and the net remittance."

SECTION 27.

Said title is further amended by revising subsection (c) of Code Section 15-21A-7, relating to "court" defined and reporting and accounts system, as follows:

"(c) The authority shall, on a quarterly basis, make a detailed report and accounting of all fines and fees collected and remitted by any court and shall submit such report and accounting to the ~~General~~ Legislative Oversight Committee for the Georgia Public Defender ~~Standards Council~~ Agency, the Office of Planning and Budget, the Chief Justice of the Supreme Court of Georgia, the House Budget Office, and the Senate Budget Office no later than 60 days after the last day of the preceding quarter."

SECTION 28.

Code Section 36-32-1 of the Official Code of Georgia Annotated, relating to establishment of municipal court, is amended by revising subsections (f) and (g) as follows:

"(f) Any municipal court operating within this state and having jurisdiction over the violation of municipal ordinances and over such other matters as are by specific or general law made subject to the jurisdiction of municipal courts shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty, as authorized by general law or municipal or county ordinance, unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender ~~Standards Council~~ Agency for representation of indigent persons in this state.

(g) Any municipal court operating within this state that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted

1215 by the Georgia Public Defender Standards Council Agency for representation of indigent
1216 persons in this state."

1217 **SECTION 29.**

1218 This Act shall become effective July 1, 2009, except that for purposes of making the
1219 appointments called for by this Act, it shall become effective upon its approval by the
1220 Governor or upon its becoming law without such approval.

1221 **SECTION 30.**

1222 All laws and parts of laws in conflict with this Act are repealed.